

Remarks

[Each of the applicant's comments below is preceded by related statements in the action dated May 5, 2008, quoted in small, bold type.]

- **Claims 1-11, 13-29 and 37-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**
  - **With respect to claims 1 and 27 the phrase "providing a food product in a flowable state in which a flowability of the food product under an influence of gravity or a density of the food product is maintained consistently" is rejected as it is unclear if the food product is actually in a state which requires a "flowing property", such as melted chocolate, or if the food product is in a state which is capable of flowing, such as solid chocolate, and as such is capable of being "flowable" under the influence of processing step such as heating.**

The applicant has amended claims 1 and 27 by replacing "flowable state" with --flowing state--.

- **With respect to claims 1 and 27 the phrase "a flowability of the food product under an influence of gravity" is rejected as it is unclear if the food product is actually in a state which requires a "flowing property", such as melted chocolate, or if the food product is in a state which is capable of flowing, such as solid chocolate, and as such is capable of being "flowable" under the influence of processing step such as heating.**

The applicant has amended claims 1 and 27 by replacing "flowable state" with --flowing state--.

- **With respect to claims 1 and 27 the phrase "a density of the food product is maintained consistently" is rejected as it is unclear if the entire food product has one density, i.e. completely melted chocolate or solid chocolate, if "a density" of the food product is with respect to a partially flowable state, i.e. a top layer melted layer. actually "flowing property", such as melted chocolate, or if the food product is in a state which is capable of flowing, such as solid chocolate, and as such is capable of being "flowable" under the influence of processing step such as heating.**

The applicant has amended claims 1 and 27 by replacing "a density of the food product is maintained consistently" with --a food product that has a stable consistency-- (p. 6, lines 25-26).

- **Claim 6 is rejected due to the phrase "the food product has a viscosity of 50,000 cps. or less" since it is unclear if the food product of dependent claim 6 which depends from Independent claim 1 is with respect to food product in the flowable state prior to ejecting the jettable media, or with respect to the food product after "reducing diffusion of the jettable media in the food product".**

The applicant has amended claim 6.

- **Claim 7 is rejected due to the phrase "the food product has a viscosity of 50 cps. to 100 cps." since it is unclear if the food product of dependent claim 7 which depends from Independent claim 1 is with respect to food product in the flowable state prior to ejecting the jettable media, or with respect to the food product after "reducing diffusion of the jettable media in the food product".**

The applicant has amended claim 7.

- **The phrase "at room temperature" in claims 14 and 17 is rejected, as it is a relative term, which renders the claim indefinite. The term "at room temperature" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to what is encompassed by the phrase "at room temperature"; it is unclear as to what degree of difference is encompassed by this phrase, since a walk-in freezer would have one room temperature which is different from the room temperature of a heated environment.**

The applicant continues to rely on the ordinary meaning of "room temperature" as explained by Wikipedia, [http://en.wikipedia.org/wiki/Room\\_temperature](http://en.wikipedia.org/wiki/Room_temperature).

- **Claim 27 is rejected due to the phrase "moving this clause may make sense in that it relates to the diffusion I think" since it is narrative in form and since the claim(s) must be in one sentence form only and thus it is unclear if the phrase further limits the claim.**

The applicant has amended claim 27.

- **The phrase "flash freezer" in claim 3 is rejected, since it is unclear what would constitute a "flash freezer" i.e. with respect to a specific type of freezing such cryogenic, or if the phrase is with respect to a desired amount of time the freezing takes place in. Thus the phrase "flash freezer" is further rejected since the phrase is a relative term, which renders the claim indefinite. The term "flash freezer" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to what is encompassed by the phrase "flash freezer"; it is unclear as to what degree of difference is encompassed by this phrase, if not a "flash freezer".**

The applicant disagrees that one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Flash freezer is understood by persons of skill in the art, for example, as described in Wikipedia, [http://en.wikipedia.org/wiki/Flash\\_freezing](http://en.wikipedia.org/wiki/Flash_freezing):

“Flash freezing refers to the process in various industries whereby objects are quickly frozen by subjecting them to cryogenic temperatures.

For example, flash freezing is used in the food industry to quickly freeze perishable food items (see frozen food). In this case, food items are subjected to temperatures well below water's

melting/freezing point (32°F or 0°C), causing the water inside the foods to freeze in a very short period of time without forming large crystals, thus avoiding damage to cell membranes.”

- Claims 1-11, 13-29 and 37-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shastry et al. (WO 2004/003089) in view of Soehnlen et al. (6355290).

Shastry et al. teaches providing a food product in a flowable state and in which the flowability of the food product under the influence of gravity, or a density of the food product, is maintained consistently (par. 0019, par. 0056). It is noted with respect to the phrase a "food product in a flowable state" that Shastry et al. is taken to positively teach such since Shastry et al. teaches "puddings" and "creams", since both the flowability of the food product under the influence of gravity, and a density of the food product, is maintained consistently. It is further noted that Shastry et al. not only teaches "almost any edible surface to be printed" (par. 0056) but further teaches ice cream which is taken to positively teach the "food product in a flowable state" since ice cream melts at temperatures of greater than 32F and thus ice cream is taken to be "flowable".

Shastry et al. further teaches providing an inkjet printer (par. 0017) capable of ejecting a series of drops for deposition on a substrate in a predetermined pattern (par. 0017) and ejecting the jettable media on a surface of the food product while the food product is in a flowable state (par. 0017, par. 0019), "reducing diffusion of the jettable media in the food product" since Shastry et al. teach ink which solidifies upon contact with the food substrate, in addition to teaching that the image is at a resolution of 50 dpi or more (par. 0054).

Claim 1 has been amended to include that “after ejecting the media, reducing diffusion of the jettable media in the food product *and reducing the flowing of the food product.*” While Shastry discloses printing images using an ink that sets almost instantly (para. 56), nowhere does Shastry describe or suggest “reducing the flowing of the food product” after ejecting the media. It can only be assumed that Shastry is printing on foods in their final state. Shastry lists many foods to print on including “puddings and mousses, ice creams and creams...” (para. 56), but is silent about the flowing state of the food products before and after ejecting the media. The only inference supported by the description is that the puddings, mousses, ice cream and creams have the same flowing state before and after an image is printed on them. Amended claim 1, on the other hand, requires that “after ejecting the media...*reducing* the flowing of the food product.” Soehnlen also fails to disclose or suggest this feature.

For at least these reasons, amended claim 1 is patentable over Shastry in view of Soehnlen.

Amended claim 27 is patentable over Shastry in view of Soehnlen for at least the same reasons as amended claim 1.

All of the dependent claims are patentable for at least the same reasons that amended claims 1 and 27 are patentable over Shastri in view of Soehnen.

Canceled claims have been canceled without prejudice or disclaimer.

Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

Please apply any charges or credits to deposit account 06-1050 referencing attorney docket 09991-133001.

Respectfully submitted,

Date: \_\_\_\_\_

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